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U.S. Citizenship
and Immigration
Services

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MAR 23 2004

FILE:

Office: SAN FRANCISCO, CA.

Date:

IN RE:

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration
and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The applicant married a citizen of the United States on November 12, 2000 in California. The applicant is the beneficiary of an approved Petition for Alien Relative. The applicant seeks the above waiver of inadmissibility in order to remain in the United States with his wife and U.S. citizen children.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. See Decision of the Acting District Director, dated June 13, 2003.

On appeal, counsel contends that the Immigration and Naturalization Service [Citizenship and Immigration Services] abused its discretion in denying the waiver as the applicant submitted sworn affidavits stating in no uncertain terms the hardship imposed on his U.S. citizen spouse and children. See Form I-290B, dated June 20, 2003.

In support of these assertions, counsel submits a mental health assessment prepared by a social worker, dated July 14, 2003. The record also contains a declaration of the applicant's spouse, dated May 21, 2002; copies of the U.S. birth certificates of the applicant's children; a declaration of the applicant, dated May 21, 2002; verification of employment of the applicant; a copy and translation of the Mexican birth certificate of the applicant; a copy of the marriage certificate of the couple; a copy of the applicant's California Identification Card and tax and financial documents for the applicant and his spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant procured entry into the United States by presenting a fraudulent Permanent Legal Resident card to immigration officials on January 2, 1995.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation and hardship to the applicant's child(ren) as a result of his inadmissibility are irrelevant considerations to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that the economic and social conditions in Mexico are such that the applicant's wife would be unable to obtain adequate medical care for her son who suffers from abscesses in his neck. Counsel further asserts that the educational needs of the applicant's children could not be met in Mexico and therefore, the applicant's wife and children cannot relocate to Mexico to remain with the applicant. See Mental Health Assessment prepared by⁴ LCSW, dated July 14, 2003.

Counsel does not establish extreme hardship to the applicant's wife if she remains in the United States in order to further her children's education and maintain access to adequate health care. The AAO notes that, as a naturalized U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The record reflects that the applicant's wife earned a salary on par with the applicant's current salary before she ceased working. *Id.* at 1-2. Counsel contends that the salary of the applicant's wife would cover childcare costs without much left over. *Id.* This argument is unpersuasive. The record reflects that the applicant's son is enrolled in school and that his daughter will reach school age in the near future. The record does not demonstrate that the applicant's wife cannot work while the children are at school or that no one other than a daycare provider is able to care for the applicant's children in the absence of the applicant's wife. *Id.* Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the

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applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.